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217331

August 21, 2006

VIA HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

AUG 21 2006

Part of
Public Record

RE: Finance Docket No. 34917
*Pioneer Industrial Railway Co. -- Alternative Rail Service — Central Illinois
Railroad Company*

Dear Secretary Williams:

Enclosed herewith on behalf of Pioneer Industrial Railway Co. ("PIRY") are an original and 11 copies of the Reply Of Pioneer Industrial Railway Co., To The Motion For Leave To Supplement Filed August 16, 2006 By Central Illinois Railroad Company, et al., in this matter. As can be seen from the certificate of service attached, copies of this Motion are being served today on the Federal Railroad Administration and all parties of record in this matter and in AB-878 and AB-1066X.

Please file stamp the 11th copy of this Motion and return it to the person making this filing for return to me. If there are any questions concerning this proposal, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,


William A. Mullins

Enclosure

cc: All parties of record in F.D. No. 34917
All parties of record in AB-878 and AB-1066X
Federal Railroad Administration

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34917

**PIONEER INDUSTRIAL RAILWAY CO.
--ALTERNATIVE RAIL SERVICE--
CENTRAL ILLINOIS RAILROAD COMPANY**

**REPLY OF PIONEER INDUSTRIAL RAILWAY CO., TO THE MOTION FOR LEAVE
TO SUPPLEMENT FILED AUGUST 16, 2006 BY CENTRAL ILLINOIS RAILROAD
COMPANY, ET AL.**

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August 21, 2006

**Attorneys for Pioneer Industrial
Railway Co.**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34917

**PIONEER INDUSTRIAL RAILWAY CO.
--ALTERNATIVE RAIL SERVICE--
CENTRAL ILLINOIS RAILROAD COMPANY**

**REPLY OF PIONEER INDUSTRIAL RAILWAY CO., TO THE MOTION FOR LEAVE
TO SUPPLEMENT FILED AUGUST 16, 2006 BY CENTRAL ILLINOIS RAILROAD
COMPANY, ET AL.**

On August 16, 2006, Central Illinois Railroad Company ("CIRY"), The City of Peoria, Illinois ("Peoria") and the Village of Peoria Heights, Illinois ("Village")¹ moved for leave to change their evidence in this matter, submitting a new estimate of the cost of rehabilitating the Kellar Branch, the line that is the subject of this proceeding. Pioneer Industrial Railway Co. ("PIRY") hereby opposes that motion. The motion should be denied because (1) the evidence submitted is untimely and is submitted without sufficient reason for its untimely submission; (2) because the evidence is based on unspecified information and knowledge of an unknown witness who has an undisclosed affiliation to CIRY.

BACKGROUND

On July 27, PIRY filed a Petition To Provide Alternative Rail Service ("Petition") pursuant to 49 U.S.C. § 11123(a) and 49 CFR Part 1146, due to the inadequacy of CIRY's service on the Kellar Branch, where it is the sole authorized operator. The Kellar Branch (the "Line") is owned by Peoria and the Village.

¹ Peoria and the Village may sometimes be referred to herein collectively as "Cities." The Cities, together with CIRY, will be referred to herein as "CIRY/Cities."

CIRY and the Cities replied to PIRY's Petition on August 3 ("Reply"). Therein, CIRY and the Cities stated, "The estimated cost to repair those FRA track defects is \$50,000." Reply at 4. This statement is contained in the pleading portion of the Reply, and is not verified by a witness with personal knowledge of the facts; rather, the pleading is signed by the filers' attorney. PIRY submitted rebuttal to the August 3 Reply on August 8, pointing out CIRY/Cities' \$50,000 track repair estimate. PIRY Rebuttal at 8 - 9.

On August 15, CIRY/Cities submitted their "Motion for Leave to Supplement the Record with Rehabilitation Cost Estimate" ("Motion"). The Motion recites, essentially, that CIRY/Cities said "\$50,000" in their Reply but meant to say "\$500,000." It further submits a one-page "Estimate for Track Repair" ("Estimate"), dated August 4, 2006.² The Estimate is on letterhead of Central Railgroup Construction Services, LLC. The Estimate contains "noted FRA defects listed below to estimate your costs to repair the track," though the alleged defects are described only generically, without specifics as to numbers or extent of the alleged defects. "We estimate," the document says, "that it will cost City of Peoria \$546,705.00 to repair these items listed above."

Pursuant to 49 CFR §1104.13(a), PIRY hereby replies in opposition to the Motion.

ARGUMENT

The Motion should be denied because the proffered evidence is untimely, submitted without adequate justification for its tardiness, is vague, and is prepared without witness verification by someone who has an undisclosed affiliation with CIRY. The Board should not accept this untimely, unreliable "evidence."

² Where the \$500,000 estimate came from is unclear. The implication is that the \$50,000 estimate (but allegedly meaning \$500,000) was based upon the study, but the study was prepared after the filing.

CIRY/Cities' Motion is untimely. An alternative service proceeding is handled by the Board under tight time frames. While the alleged new evidence shows a date of August 4, just one day after CIRY/Cities' Reply was filed, the alleged new evidence was not filed with the Board until almost two weeks later. Thus, the material should be rejected by the Board. *See CSX Transportation, Inc.-Discontinuance-At Memphis, In Shelby County, TN*, STB Docket No. AB-55 (Sub-No. 618), 2002 STB LEXIS 646 (served Oct. 28, 2002) at *2 (striking applicant's late-filed evidence and admonishing the applicant against "introduc[ing] important cost evidence at the eleventh hour").

No adequate excuse is given to justify acceptance of this late-filed material. Although the material is dated only one day after CIRY/Cities' August 3 Reply, that Reply did not indicate that such evidence was in preparation or would be forthcoming. Moreover, the evidence should have been available earlier inasmuch as it was prepared by an affiliate of CIRY, Central Railgroup Construction Services, LLC ("Central").³ Thus, the Motion should be denied.

Moreover, the material submitted is, effectively, an unscheduled, untimely response to PIRY's verified evidence addressing the cost of repairing the Kellar Branch. See Verified Statement of Roger Stice in PIRY's August 8 Rebuttal. Untimely material, such as CIRY and the Cities have submitted, should not be accepted by the Board.⁴ *See generally SWKR Operating*

³ Central is an affiliate of CIRY, as evidenced by Appendix 1, printouts of two reports from the Illinois Secretary of State's website, showing both CIRY and its affiliate D.O.T. Rail Service, Inc., having the same street address as shown on Central's letterhead.

⁴ Indeed, if the study was done on August 4th, one wonders why it was not put into the record earlier. It appears that CIRY/Cities did not decide to correct its "typo" and put in the alleged "previously done" study until after PIRY pointed out, in its August 8th filing, the wide disparity between the \$50,000 estimate and the \$2+ million estimate done by the Illinois Department of Transportation. Curiously, the Cities and CIRY now have put in four different estimates of the alleged rehabilitation costs: \$50,000; \$500,000; \$546,705.00; and \$2,658,930. CIRY/Cities' "evidence" seems to change every minute.

Co.--Abandonment Exemption--In Cochise County, AZ, In The Matter Of A Request To Set Terms And Conditions, STB Docket No. AB-441 (Sub-No. 2X), 1997 STB LEXIS 286 (served Nov. 12, 1997) at *4-*5 (striking untimely evidence which was not proper response in the procedural posture of the case), and *Orange County Transportation Authority; Riverside County Transportation Commission; San Bernardino Associated Governments; San Diego Metropolitan Transit Development Board; North San Diego County Transit Development Board -- Acquisition Exemption -- The Atchison, Topeka And Santa Fe Railway Company*, 10 I.C.C. 2d 78; 1994 MCC LEXIS 31 at Finance Docket No. 32173 at *8 (striking a reply to a reply which was not permitted under the Board's regulations).

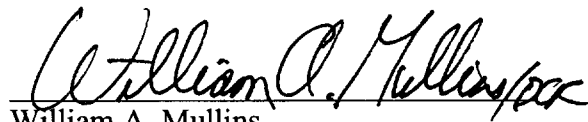
CIRY/Cities' Motion should also be denied because the material submitted is not "evidence." It is, instead, an unsigned summary by an unknown person based on unspecified information and knowledge. Furthermore, that unknown person has an undisclosed affiliation with CIRY, inasmuch as Central is affiliated with CIRY. By contrast, Mr. Stice, whose own estimates for rehabilitation costs basically confirm the \$50,000 figure to bring the line to Class 1 status, not the \$500,000 figure, based his estimate of repair costs on personal knowledge of the track involved, disclosed his employment affiliation and verified his statement as required by the Board's regulations. Material submitted to the Board that makes assertions of fact is required to be verified by the person making the assertions. See 49 CFR §1104.4(b)(3). CIRY/Cities' supplemental "evidence" does not meet this requirement. CIRY/Cities' unverified summary by an unknown person or persons based on unspecified information does not rise to the level of evidence that should be accepted by the Board.

CONCLUSION

CIRY/Cities' Motion should be denied. The purported evidence submitted is untimely and submitted nearly two weeks after its apparent preparation, despite the tight timeframes of this case. Moreover, the material is unverified and prepared by an unknown person or persons with an undisclosed affiliation with CIRY, based on unspecified information and knowledge. Accordingly, it does not qualify for acceptance by the Board. For all of the foregoing reasons, the Board should deny CIRY/Cities' Motion.

Respectfully submitted,

Daniel A. LaKemper
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Peoria, IL 61607



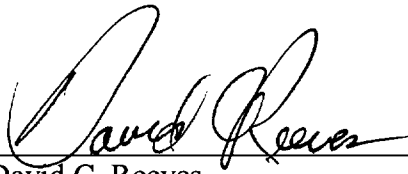
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August 21, 2006

Attorneys for Pioneer Industrial
Railway Co.

CERTIFICATE OF SERVICE

This is to certify that on August 21, 2006, I caused the foregoing Reply Of Pioneer Industrial Railway Co., To The Motion For Leave To Supplement Filed August 16, 2006 By Central Illinois Railroad Company, et al., to be served upon Central Illinois Railroad Company, the City of Peoria, IL, the Village of Peoria Heights, IL, and the Federal Railroad Administration by hand or overnight delivery. In addition, I served copies on each party of record in this proceeding, and in the related proceedings, AB-878 and AB-1066X, by first-class mail or a more expeditious method:

A handwritten signature in black ink, appearing to read "David Reeves", written over a horizontal line.

David C. Reeves
Attorney for Pioneer Industrial Railway Co.